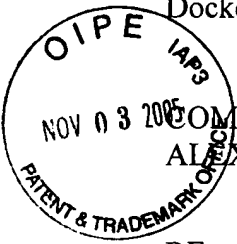


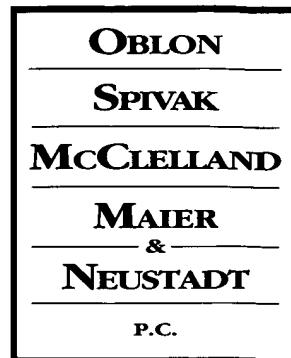
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Docket No.: 0557-4956-3

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313



RE: Application Serial No.: 09/544,289
Applicant: Takayuki HIYOSHI
Filing Date: April 6, 2000
For: OPTICAL WRITE APPARATUS
Group Art Unit: 2861
Examiner: PHAM, H. C.

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SIR:

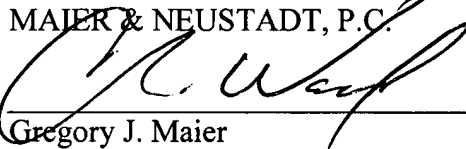
Attached hereto for filing are the following papers:

PROVISIONAL ELECTION OF SPECIES

Our check in the amount of \$0 is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Gregory J. Maier
Registration No. 25,599

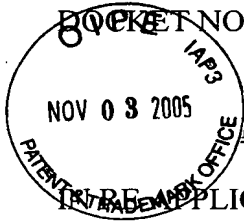
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DOCKET NO.: 0557-4956-3



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF

:

Takayuki HIYOSHI

: EXAMINER: PHAM, H. C.

SERIAL NO: 09/544,289

:

FILED: April 6, 2000

: GROUP ART UNIT: 2861

FOR: OPTICAL WRITE
APPARATUS

:

PROVISIONAL ELECTION OF SPECIES

COMMISSIONER FOR PATENTS
ALEXANDRIA, VA 22313-1450

SIR:

In response to the Election of Species requirement dated October 3, 2005, the Applicant provisionally elects with traverse Species I drawn to Figures 1-5 and 7, and identifies Claims 2-7, 9-24, 40, 41, and 45-47 as readable on the provisionally elected species.

The Applicant respectfully traverses the election requirement for several reasons.

First, the outstanding Official Action merely includes the conclusory statement that "[t]his application contains claims directed to ... patentably distinct species ..." without stating any basis whatsoever in support of such a finding. This is in violation of MPEP § 816, which states:

The particular reasons relied on by the examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given. ...

Application Serial No.: 09/544,289
Response to Election of Species Requirement
dated October 3, 2005

In the absence of any annunciated basis, it is respectfully submitted that the PTO clearly has not carried forward its burden of proof to establish distinctness.

Secondly, MPEP § 806.04(f) requires:

Claims to be restricted to different species must be mutually exclusive. ..

The outstanding Official Action fails to address in any way whether the pending claims recite mutually exclusive characteristics and this failure provides a further basis for traversing the election requirement.

Finally, MPEP § 803 states:

... If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

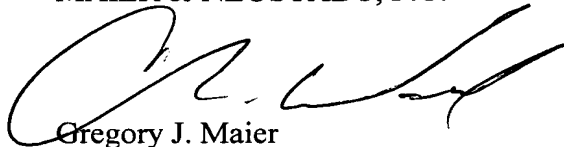
The claims of the present invention would appear to be part of an overlapping search area. Accordingly, the Applicant also respectfully traverses the outstanding Election requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner.

Application Serial No.: 09/544,289
Response to Election of Species Requirement
dated October 3, 2005

Therefore, it is respectfully requested that the requirement to elect a single species be withdrawn, and that a full examination on the merits of Claims 1-24, 38, 40, 41, and 44-47 be conducted.

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



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GJM:CDW:brf

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